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JOINT FORCES STAFF COLLEGE

JOINT ADVANCED WARFIGHTING SCHOOL



**PREVENTION OF US-CHINA ARMED CONFLICT OVER SOUTH CHINA SEA
TERRITORIAL DISPUTES**

by

Michael W. Hartmann

LCDR, USN

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A paper submitted to the Faculty of the Joint Advanced Warfighting School in partial satisfaction of the requirements of a Master of Science Degree in Joint Campaign Planning and Strategy. The contents of this paper reflect my own personal views and are not necessarily endorsed by the Joint Forces Staff College or the Department of Defense.


This paper is entirely my own work except as documented in footnotes.

Signature: 
1 March 2013

Thesis Adviser:

Signature: 
COL Wiersema, Thesis Advisor

Approved by:

Signature: 
Robert M. Antis, PhD, Committee Member

Signature: 
COL Torres, Committee Member

Signature: 

**James B. Miller, Colonel, USMC
Director, Joint Advanced Warfighting School**

ABSTRACT

The South China Sea is in danger of sparking armed conflict between several nations claiming sovereignty over its islands and waters. Due to relationships the United States has with countries in the region and the risk to freedom of navigation, any conflict here is likely to compel United States involvement. As it would involve two nuclear powers, the consequences of a China-United States military conflict will be globally significant and long lasting. Recent actions by the United States are giving the appearance of policy success; however, they have not brought the island disputes any closer to resolution. This thesis will analyze the interests and actions of relevant actors in the South China Sea and provide recommendations for the United States to avoid a conflict with China and to resolve the island disputes.

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CHAPTER 1: INTRODUCTION

The coastal nations of the South China Sea have competing maritime claims for the various islands, rocks and reefs within that region. At stake is not only nationalist pride, but also the fishing and mineral resources in the surrounding waters and a sea base from which to extend their respective country's defenses. The United Nations Convention on the Law of the Sea does not inform countries on how to resolve these claims and furthermore encourages countries to take provocative measures to legitimize a claim. As a result, military, government and non-government actors have used coercion, intimidation and sometimes force to establish and protect perceived sovereign territory or jurisdictional waters.

As the United States has several mutual defense treaties within the region, the unresolved status of the South China Sea islands is a risk to maintaining peace between the United States and China. In order to ensure that these claims do not lead to conflict with China, the United States should establish a clear policy that any use of military power to coerce or enforce a unilateral claim will be negated by our military power, and that resolution of these claims should be through a negotiating process lead by China, provided it is consistent with its doctrine of Peaceful Coexistence. An essential component of this policy is that the United States must ratify the UN Convention on the Law of the Sea.

Within the greater Western Pacific region there are several territorial sea disputes. Additionally, even in cases where territory is not in dispute, there may be disputes over where lines of jurisdiction lie between area nations. Those which have the greatest potential impact on United States interests include the Kuril Islands between Japan and

Russia, Dokdo Island between South Korea and Japan, the Ryukyu Exclusive Economic Zone demarcation between Japan and China, the Senkaku Islands between Japan and China, Taiwan, the Paracel Islands between China and Vietnam, the Scarborough Shoal between China and the Philippines, and the Spratly Islands which involve five countries. Excluding Taiwan as a special case, all of these disputes have similar roots and considerations when discussing a way forward to reach a lasting resolution. This paper will focus mainly on the Paracel Islands and the Spratly Islands. These two disputed areas represent the majority of the disputed territory and jurisdictional area, the greatest political complexity given the number of nations involved, and the area of the most development. For these reasons, the author believes this area represents the most likely location for the start of armed conflict. Therefore, any lasting solution which can be brokered here would not only greatly enhance the security posture of the region, but would also serve as a framework for resolution in other areas of the region.

This thesis will begin with a historical review of the Paracel and Spratly Islands. From there, the paper will show how the significance of the island groups changed through the late 20th century, most notably with the ratification of the third UN Convention of the Law of the Sea. The thesis will address how claimants of these islands have responded to the increased significance of the islands and the actions of one another. At this point, the paper will capture the broader national interests of countries in the region, the United States, and the global community as they pertain to the disputed islands. This will include an analysis of China's constitutional philosophy of the Five Principles of Peaceful Coexistence. The Five Principles form the basis of China's only public produced strategy document, China's Peaceful Development. They inform the

reader of what a Chinese solution to the South China Sea dispute would look like and serve as evidence for the author's recommendations. Following this, the thesis will describe and analyze the recent involvement of the United States and show how perceived gains have not necessarily brought the region closer to a solution. Finally, the paper will provide recommendations for diplomatic and military action that would be successful in the current regional environment and given current United States military capability.

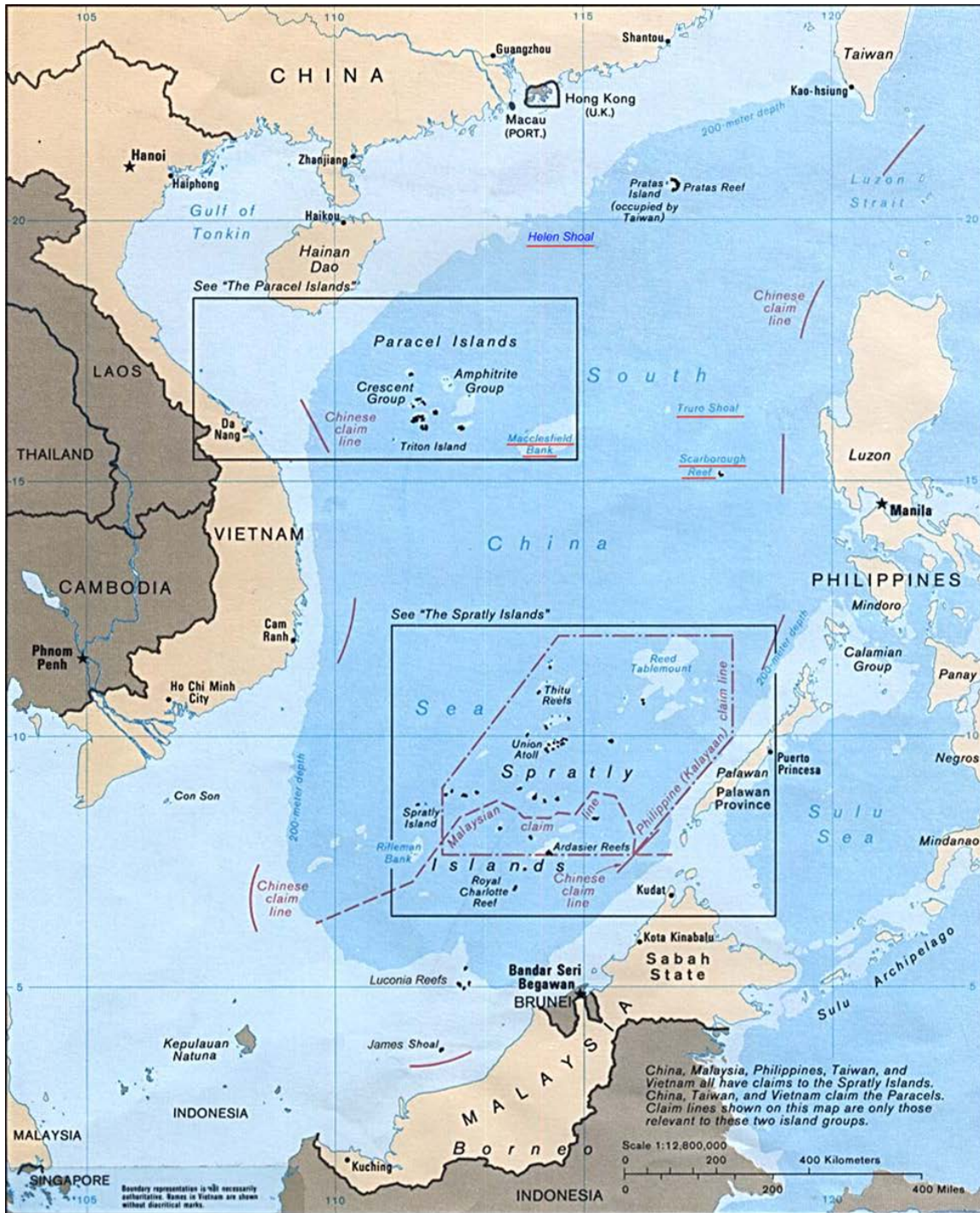


Figure 1 – Map of South China Sea with Nine Dotted Line Overlay¹

¹ Central Intelligence Agency, “Perry-Castaneda Library Map Collection,” UT Library Online, JPEG image file, http://www.lib.utexas.edu/maps/middle_east_and_asia/schina_sea_88.jpg (Accessed 1 January 2013).

CHAPTER 2: THE DISPUTED ISLANDS (1930-1988)

The Paracel Islands

The Paracel Islands are a group of approximately 30 reefs, rocks and islands (also referred to as features) located 350 km southeast of Hainan Island, China and 400 km east of Da Nang, Vietnam (See Figure 1.) They have a total combined land mass of approximately 10 km² and are contained within an approximate 160 km by 200 km area. The islands are disputed between China and Vietnam.

The relevant history of the Paracel Islands goes back to the colonial era of French Indochina. In 1932, the French Indochina government annexed the Paracel Islands and established a small weather station on Prattle Island. However, other than this weather station, there was no permanent human presence on the islands or any active administering of them. Fishermen of many nations used the islands and their waters for brief periods to rest, as shelter from weather, or to hunt the fish which migrate through the surrounding shallow waters without fear of government interference.

Japanese expansion influenced the South China Sea beginning with the second Sino-Japanese War in 1937, and through World War II. By the end of 1942, Japan conquered French Indochina and dominated the South China Sea and by proxy the Paracel Islands within them. Japan did not add any infrastructure or governance to the islands during its tenure and it is likely that fishermen of littoral nations continued to frequent them during this period. Following the defeat of Japan, the Nationalist Chinese government published a map of the South China Sea with nine dotted lines encircling the majority of the area and began lobbying the Allied forces for ownership of the Paracel Islands while negotiations of the Treaty of Peace with Japan (not signed until 1951) were

underway.¹ At the same time, China occupied Woody Island, a previously uninhabited island within the Paracels. However, with the resumption of the Chinese revolution following the war, the Chinese were not invited to most treaty discussions due to uncertainty within the United States over support for the Nationalists. By the time the United States had decided in favor of the Nationalist government, it had already been pushed off the Chinese mainland, Eastern Europe had fallen behind the “Iron Curtain,” and North Korea had invaded the south. As a result, the new communist government was also excluded from treaty negotiations and the claim over the Paracel Islands which it had maintained was not recognized. In fact, the signed Treaty of Peace with Japan makes no mention of the disposition of the Paracel Islands even though Japan renounced its ownership of them.

In 1959, South Vietnam began to assert control of a group of islands on the western half of the Paracels by conducting operations to and from the French Indochinese established weather station on Prattle Island. China quickly countered this development by developing its small outpost on Woody Island into a naval support base from which to conduct patrols over the eastern half of the Paracel Islands. For nearly 15 years the two militaries watched each other closely until January 1974 when a quarrel between two fishing vessels from the two countries escalated into a clash between naval forces. As a result, China occupied Prattle Island and has since maintained the only military presence on or around any of the Paracel islands. Despite this forceful takeover of the island group, it may not be indicative of a particular national strategy. Diplomatic notes exchanged between North Vietnam and China indicated that control of the islands would

¹ M. Taylor Fravel, “China’s Strategy in the South China Sea,” *Contemporary Southeast Asia* 33, no. 3 (2011): 293.

have been turned over to China after the fall of South Vietnam.² Following the fall of Saigon, the new Vietnamese government did not make any public acknowledgement of acceptance regarding Paracel Island ownership. However, since there was no international organization which tracked island ownership or sovereign disputes, it is not surprising that such a proclamation was not made. Since then there have not been any significant military clashes around the Paracel Islands, however Chinese fishing patrol ships have regularly detained Vietnamese fishermen who violate China's unilaterally determined fishing moratoriums. Other than Taiwan, which shares all claims with China, no other nations have claims against the Paracel Islands.

The Spratly Islands

The Spratly Islands are a group of approximately 170 reefs, rocks, and islands located between 100 km and 600 km off the coast of Malaysia (Borneo Island), Brunei, and the Philippines (see Figure 1). The features have a total combined land mass of approximately 4 km² however span more than a 240,000 km² area. The islands are disputed among China (and Taiwan), Malaysia, Vietnam, Philippines, and Brunei.

The early history of the Spratly Islands is very similar to that of the Paracel Islands. They served as a communal fishing area and respite for seamen up until the late 20th century. Originally administered by the French in the 1930s, they were taken over by the Japanese Empire during World War II, and were left unassigned by the Treaty of Peace with Japan. Shortly thereafter, most South China Sea nations announced claims to some or all of the islands with Nationalist China being one of the first to establish a permanent settlement. Administration of Itu Aba Island was maintained by the

² Ibid., 298.

Nationalists following the Chinese revolution and it remains so through present times.³

Due to the vast area that the Spratly Islands span, only two nations claim the entire group and few offer specifics to what their claims are at this time. The two exceptions are China's "dotted line" map which covers all of the Spratly Islands, and the Philippines that claimed all but a handful of features on the western and southern extremes by a 1978 presidential decree. From this period through 1987, Taiwan, Vietnam, and the Philippines physically controlled up to 30 of the features within the Spratly Islands while China did not occupy any. To avoid falling too far behind, China launched a task force to build outposts on nine unoccupied features within the island chain between January and March 1988. This sparked a violent clash with Vietnam which had moved to stop China at Johnson Reef. On 14 March a fierce firefight between the two navies occurred and 74 Vietnamese were killed. This event caused much diplomatic tension and resulted in the early termination of the task force's settlement activities, however not before completing six of the nine outposts.⁴

³ Encyclopedia Britannica Online, s. v. "Spratly Islands," <http://www.britannica.com/EBchecked/topic/561209/Spratly-Islands> (accessed January 1, 2013).

⁴ Fravel, 298.

CHAPTER 3: THE DISPUTED ISLANDS (1988-PRESENT)

The UN Convention on the Law of the Sea

The last two decades of the 20th century would dramatically impact the course of events in the South China Sea. In 1982 the third UN Convention on the Law of the Sea (UNCLOS) was held to negotiate what international law should be for the territorial seas, innocent passage, straits, exclusive economic zones (EEZs), the continental shelf, the high seas, protection of the marine environment, and marine research and technology. For twelve years following the convention, the UN held additional negotiations with individual countries over concerns with the law as written until 1994 when it believed a sufficient consensus had been reached. Later that year the UNCLOS was entered into force when 38 countries had ratified it. The UNCLOS also created the Commission on the Limits of the Continental Shelf, the International Seabed Authority, the International Tribunal for the Law of the Sea, and the International Tribunal for the Law of the Sea Trust Fund.¹

Of the many aspects of the UNCLOS which influence events in the South China Sea, the laws establishing the EEZ and the jurisdiction of the continental shelf are most significant. Article 57 of the UNCLOS states that the EEZ shall extend 200 nautical miles (~370 km) from a country's baseline (a series of straight lines proposed by a country to simplify its coastline).² Within the EEZ, a country has sovereign rights to exploit and explore the resources in the water and seabed, jurisdiction over marine research and jurisdiction on the protection of the marine environment. Additionally,

¹ "United Nations Convention of the Law of the Sea," November 16, 1994, *United Nations Treaty Series* 1833, no. 31363, 397-398.

² *Ibid.*, 419.

Article 76 of the UNCLOS states that a country's sovereignty over the sea bed may extend beyond the EEZ to a maximum of 350 nautical miles (~648 km) if it meets certain technical requirements demonstrating that the sea bed is part of the country's continental shelf.³ The Commission on the Limits of the Continental Shelf was created in part to validate the claims of this nature. Together these laws turn small ocean features which were of only interest to fishermen pre-1982, into the legitimate basis for approximately 1,300 km² of government regulated area from which to extract fish, oil and gas and other natural resources. When all of these areas are mapped out, nearly all of the South China Sea is covered and with significant overlapping areas between features (See Figure 2.)

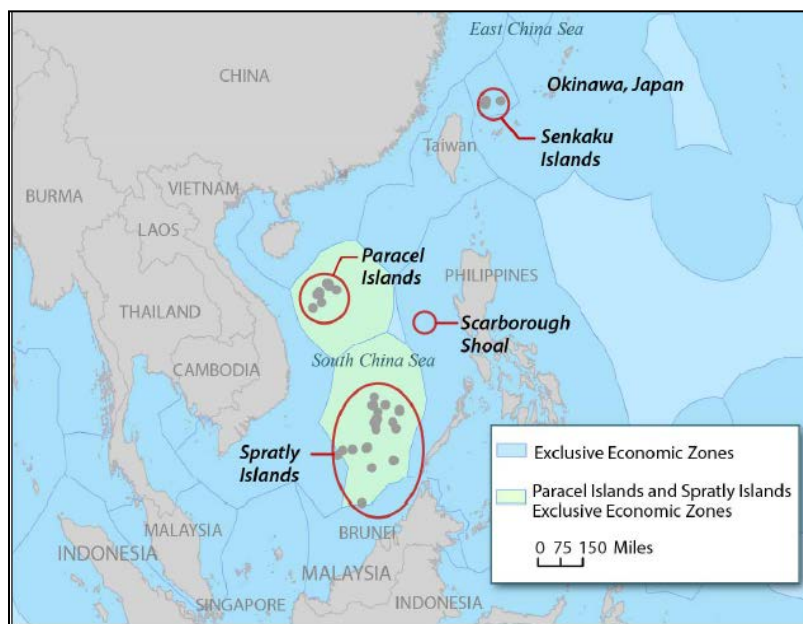


Figure 2 – EEZs in the South China Sea⁴

Response to UNCLOS in the Western Pacific

Four years after the UNCLOS was entered into force, Japan and South Korea were the first nations in the region to ratify it. Concerned with being at a disadvantage to

³ Ibid., 428-429.

⁴ Congressional Research Service. *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke. CRS Report R42784 Washington, DC: Office of Congressional Information and Publishing. October 22, 2012, 21.

its regional competitors, China ratified the UNCLOS soon thereafter despite disagreements with how various articles were being interoperated by the international community. Along with the UNCLOS ratification, China passed or amended a series of domestic laws and policies which created the locally enforced versions of the UNCLOS.

The first of these laws was Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, passed in 1992. This law states the size of China's territorial sea and contiguous zone, while also providing general rules for foreign nations operating in these areas. While the law does not include the baselines from which the territorial seas are derived, it does state that Spratly Islands are part of China's land territory and deserving of a territorial sea. In 1996, China passed the Declaration of the Government on the Baselines of the Territorial Sea of the PRC of 1996. The territorial sea law articulates the baselines for most of mainland China, Hainan Island and the Parcel Islands but they do not include the Spratly Islands. While the 1996 law finishes by stating that the remaining baselines will be announced at a later date, the omission of the Spratly Islands may indicate China is not committed to establishing them as sovereign territory.

In 1998, China passed the Exclusive Economic Zone and the Continental Shelf Act. This law mirrored the UNCLOS in establishing the size of the EEZ and Continental Shelf jurisdictional area. However, Article 14 of the PRC EEZ law states, "the provisions of this act shall not affect the historical rights of the PRC."⁵ China would not provide supporting information as to what historic rights meant with the passing of the

⁵ China, Standing Committee of the Ninth National People's Congress, 1998, Exclusive Economic Zone and Continental Shelf Act. http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn_1998_eez_act.pdf (accessed October 21, 2012).

act, but regardless, the validity of historic rights is in doubt. In a case argued before the International Court of Justice in 1951, Britain challenged Norway's claim to historic rights as a justification to exert jurisdiction beyond the territorial seas. If the criteria cited by the court validating Norway's claim is applied to China's claim, the historic rights argument would not be valid for the South China Sea.⁶

During this period of administrative development, China made one more gain in the Spratly Islands. In 1994, China built a series of wooden huts on Mischief Reef. The structures came under diplomatic protest from the Philippines; however China claimed the structures were only shelters for fishermen. In 1998, a Philippines aerial patrol observed the small wooden structures were being replaced by large concrete buildings. Again the Philippines launched a diplomatic protest but without a meaningful deterrent, China was not dissuaded from completing its development. In fact, the Philippines own Secretary of Defense criticized the air force as not being able to fly, and the navy as not being able to sail.⁷

The following ten years would be relatively quiet in the South China Sea. In 2002, the ASEAN nations and China signed the Declaration of Conduct which reaffirmed the collective desire for regional stability. Along those lines, the Declaration states that claimant nations will exercise restraint in any activities that may be provocative to others regarding the South China Sea islands, specifically citing the establishment of any new installations on uninhabited islands. For the most part, this non-binding agreement was successful in easing South China Sea tensions until the end of the decade.

⁶ Peter A. Dutton, "Three Disputes and Three Objectives," *Naval War College Review* 64, no. 4 (Autumn 2011): 46-47.

⁷ Terry McCarthy, "Reef Wars," *Time*, March 8, 1999, <http://www.time.com/time/world/article/0,8599,2054240,00.html> (accessed October 21, 2012).

In 2009 the UNCLOS sparked a diplomatic debate that would result in significant regional tension three years later. As previously mentioned, one of the institutions created by the UNCLOS was the Commission on the Limits of the Continental Shelf. The Commission was the designated committee to adjudicate claimant justifications for extending shelf rights beyond the 200 nm EEZ limit to a maximum of 350 nm. As part of the process in executing the UNCLOS, the commission established a deadline of May 2009 for claimants to submit justifications for their continental shelf extension.

The first submission was a combined claim by Vietnam and Malaysia. Their claim acknowledged the lateral limits to their EEZ and continental shelf but the depth of the EEZ went the full 200 nm. Additionally, they submitted that the space between their two countries EEZs jointly belongs to those two nations under the continental shelf provisions of the UNCLOS. Coincidentally, the Philippines submitted the Republic Act no. 9522 that established its territorial baselines shortly before the joint Vietnam-Malaysia statement. These two submissions compelled China to object diplomatically through two Notes Verbale to the UN.⁸

In the first of these Notes addressing the Philippines baselines, China predictably reiterated its “indisputable sovereignty” over the Spratly Islands which has existed “since ancient time[s].”⁹ However China’s second Note addressing the joint Vietnam-Malaysia claim would prove much more interesting. In it China broadened its aperture by claiming “indisputable sovereignty over the islands in the South China Sea and the adjacent

⁸ Notes Verbale are unsigned diplomatic communications written in the third person of similar formality to a memorandum.

⁹ China, Permanent Mission of the People’s Republic of China to the United Nations, 2009, CML/12/2009. <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PHL.htm> (accessed October 21, 2012).

waters, and enjoys sovereign rights and jurisdiction over the relevant waters... (see attached map).”¹⁰ The attached map being none other than the nine dotted line map published following World War II. Although the nine dotted line map had been discussed among academics before as a basis for regional strategy, the second Note Verbale was the first submittal of the map to a Law of Sea adjudicating body. While immediately dismissed by some as having “no legal, historical or factual basis,”¹¹ most have attempted to understand how the map fits into the UNCLOS construct from the Chinese perspective. At one extreme is the position that the map reflects territorial waters. However, the evidence against this can be seen within the map’s accompanying Note and China’s 1996 baseline law previously discussed. The Note refers to two levels of control, “sovereign rights and jurisdiction” which independently apply to “relevant waters.” The two levels of control correlate to how the UNCLOS describes the state’s rights in the territorial seas and the EEZ. Furthermore, if the entire nine dotted map was to represent territorial seas, China would have had no need to submit the baselines for the Paracels and any part of mainland southeast China which is internal to the nine dotted map.¹² Therefore China is acknowledging that within the nine dotted map, there are waters which are territorial seas and waters that are EEZ.

The Philippines has recently made a similar concession. The original Philippines Presidential Decree 1596 of 1978 mapped a trapezoid area for which all the areas internal

¹⁰ China, Permanent Mission of the People’s Republic of China to the United Nations, 2009, CML/17/2009. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012).

¹¹ Vietnam, Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, 2009, 86/HC-2009. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012).

¹² M. Taylor Fravel, “China’s Strategy in the South China Sea,” *Contemporary Southeast Asia* 33, no. 3 (2011): 295.

to were sovereign. Furthermore, the decree implied that some or all of the islands are to be considered part of the Philippine archipelago. This had the effect of allowing baselines to be drawn from the historic Philippines islands (namely Palawan Island) directly to and around the Spratly Islands. In the 2009 Republic of Philippines Act 9522, the 1978 decree is referenced to define the sovereign area; however the law treats these islands as individual features (“Regime of Islands,” Article 121 of the UNCLOS) vice an extension of the archipelago. As a result, waters between the Philippines and the Spratly Islands are considered international waters vice territorial waters.

A third point of interest is Malaysia and Vietnam’s response to China’s 2009 Note Verbale. Both countries stated that the joint submission “constitute[d] legitimate undertakings in implementation of the obligations of States Parties to the 1982 UNCLOS.”¹³ The fact that they led their rebuttal by defending the *process* vice the *claim* seems to be an admission of imperfection. That the two countries felt *obligated* to do something by the May 2009 deadline should be read as an acknowledgement that their submission is not the final answer. In fact, the Malaysia rebuttal would go so far to state that the joint submission was made without prejudice to competing claims from other regional claimants.

The final flurry of 2009 diplomatic correspondence occurred between the Philippines and the authors of the joint submittal. The Philippines took a much more conciliatory tone by referring the Commission to its own bylaws which prohibit any ruling on continental shelf claims while a maritime dispute exists. The Philippines

¹³ Malaysia, Permanent Mission of Malaysia to the United Nations, 2009, HA 24/09. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012).

response also stated that territorial disputes only existed on “some of the islands.”¹⁴

While there is no question that all islands are in dispute between at least two parties, the downplaying of the degree of the dispute is an important tempering action by the Philippine government. Vietnam responded by stating its defense of the process as it did with China. But Vietnam took it a step further by stating that “all disputes relating to the Eastern Sea (South China Sea) must be settled through peaceful negotiations... and the Declaration on the Conducts of Parties in the South China Sea.”¹⁵

In summary, the laws and diplomatic correspondence of claimant nations during this period demonstrated some encouraging signs. First, all nations demonstrated some degree of pragmatism to what the final disposition of the Spratly Islands will be. Second, all nations agreed that resolution should come through a negotiation process that they themselves craft, vice one adjudicated through an international body. And finally, each nation was restrained in the rhetoric they used, generally rebutting arguments with counter arguments of the same intensity and substantiation.

However, there is a noticeable difference in the tone for an intra-ASEAN communication compared to one directly mentioning China. This supports China’s perception of ASEAN being used to balance China which makes desires for multiparty discussions on the disputed islands, such as through the ASEAN Regional Forum (ARF), unacceptable to China. To this point, while the 2002 Declaration of Conduct was generally successful in reducing tensions by restraining provocative actions within the

14 Philippines, Permanent Mission of the Republic of the Philippines to the United Nations, 2009, No 000819. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012).

15 Vietnam, Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, 2009, No 240/HC-2009. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012).

South China Sea, it did little to specify a plan for future dialog or to establish trust. As the nations attempted to negotiate implementation guidance for these aspects, they were routinely thwarted by Vietnam's desire for language that required ASEAN nations meet amongst themselves prior to meeting with China, to which China objected.

When the Commission on the Limits of the Continental Shelf met to adjudicate the joint Vietnam and Malaysia claim in October 2009, it was held mostly in private. At the conclusion of its discussions, the Commission predictably decided to defer any recommendations on the submission until such time that the claimant nations could resolve their dispute. This peaceful stalemate lasted until summer 2010 when the United States waded into the South China Sea dispute, only eight years following the signing of the Declaration of Conduct. By comparison, it took nearly two decades of negotiations for China to resolve its border disputes with the Soviet Union.

CHAPTER 4: REGIONAL INTEREST

Gaining Energy Security from the South China Sea

Estimates of the oil and gas deposits within the South China Sea vary wildly. Given the disputed nature of the South China Sea and the actions taken by claimant nations to complicate other's survey activities, companies have been reluctant to take on exploration and exploitation projects. For example, in May 2011 a Chinese Maritime Surveillance Force ship crossed close astern of a PetroVietnam ship, severing its oil survey cables.¹ For those survey operations which have been completed, full results have often been restricted from public release by the commissioning government. Even those estimates that have been released often lack the specificity of whether they describe "proven" reserves (90% probability of being recovered), "probable" reserves (50% probability of being recovered), "possible" reserves (10% probability of being recovered), or "resources" (probability of recovery is not considered). Also not often specified is what percentage of the resources may be "unconventional" (such as shale gas), which requires a disproportional amount of energy to recover and process. Some independent estimates expect unconventional resources to make up a significant percentage of those in the South China Sea. Nevertheless, some broad conclusions can be made regarding the significance of South China Sea oil and gas deposits to the energy security of the region.²

Table 1 illustrates the oil and natural gas imports/exports of claimant nations.

¹ M. Taylor Fravel, "China's Strategy in the South China Sea," *Contemporary Southeast Asia* 33, no. 3 (2011): 306.

² Nick A. Owen and Clive H. Schofield, "Disputed South China Sea Hydrocarbons in Perspective," *Marine Policy*, no. 36 (2012): 812-813.

Both Malaysia and Brunei are net exporters of oil and gas products and the Philippines and Vietnam are self-sufficient in natural gas usage but do not have an export industry.

Country	Oil Imports – 2011 (thousand barrels/day)	Natural Gas Import - 2010 (billion cubic feet)
China	4625	995 [2011]
Philippines	289	0
Vietnam	34	0
Malaysia	(70)	(1026)
Brunei	(133)	(312)

Table 1 – Net Energy Imports for South China Sea Claimant Nations³

Two estimates of the United States Geological Survey in 1994 and 2010 and a 1995 estimate by the Russian Research Institute of Geology of Foreign Countries indicate South China Sea resources range between 5,200 and 21,500 million barrels. For frontier oil fields, of which any development in the South China Sea would be classified, industry has historically been able to recover approximately 35% of the resources before further extraction becomes fiscally imprudent. Production of fuels is not constant over time as decreasing reservoir pressure brought on by extraction will reduce the flow rate of hydrocarbons from the ground. As a result, annual peak oil production should be expected to reach an approximate high of 3.3% of the total recovered oil. Given these two factors, peak oil production of the entire South China Sea may only reach 165,000 to 685,000 barrels per day.⁴

For conventional natural gas resources, the 2010 United States Geological Survey

³ Data taken from US Energy Information Administration statistics. Available at <http://www.eia.gov/countries> (accessed 1 October 2012).

⁴ Owen and Schofield, 815-816. Citation covers raw data throughout the paragraph.

is the most authoritative and estimates 145,486 billion cubic feet within the South China Sea. Recovery factors for natural gas fields can be much higher with industry norms around 75%. Peak production percentages are only slightly higher though at 5.4% of the total recovered resources. Applying these two factors, peak conventional natural gas production can be expected around 5,900 billion cubic feet.⁵

Given these potential production rates, the South China Sea is far from the guarantor of ‘energy security’ one might conclude it is, based on the actions and statements of claimant governments. Oil production rates compared to China’s 2011 imports barely exceed 10% and will be even less significant if projections for a 5,000 barrel per day increase in demand by 2025 materialize.⁶ For the other claimant nations, harnessing the entirety of these resources would be economically meaningful; however in all but the Philippines, growth in demand will still outstrip supply even at peak oil production.⁷ Furthermore, each of the non-Chinese claimant nations have implied that they do not expect to receive 100% of the South China Sea oil and gas resources and therefore this theoretical economic gain would be pared. In the case of natural gas, the potential production rates are significant to all. However the ability of natural gas products to replace oil products is limited in the near term. Significant storage, transportation, and utilization technologies need to be developed to transition a country’s energy infrastructure to support natural gas products. As an example, natural gas is only

⁵ Owen and Schofield, 818-820. Citation covers raw data throughout the paragraph.

⁶ Juli A. MacDonald, Amy Donahue and Bethany Danyluk, *Energy Futures in Asia Final Report*, Booz, Allen, Hamilton report sponsored by Director, Net Assessment, Office of Secretary of Defense, November 2004. 33.

⁷ Owen and Schofield, 817.

expected to make up 4% of China's overall energy usage in 2020.⁸

If this review accurately describes the scale of available resources and the ability to recover them, then it brings into question why regional actors, and especially those from China, have inflated the economic promise of the region. While all claimant nations may use economic rhetoric to rally the public to what has been and will continue to be a difficult task, in China's case it may serve another purpose. For only China has aspirations of becoming a great power and, along with that, developing a military comparable of a great power. If China can portray its military development as a response to a perceived economic loss, other countries may conclude that resolving the territorial disputes or negotiating resource exploitation agreement would stem further developments in its military and therefore abstain from starting a regional arms race. Therefore China may choose to delay resolution covertly in order to widen the military capability gap in support of China's defense strategic goals.

China's Defense Strategic Goals in the South China Sea

Following China's civil war, the People's Liberation Army Navy (PLAN) had a strategy of near-coast defense. Its purpose was limited to the defense of the littorals against an invasion of the Nationalist Chinese from Taiwan, aggression by imperial powers, and supporting the People's Liberation Army's (PLA) ground and air forces. This was a hedging strategy necessitated by aggressive rhetoric from Chiang Kai-shek and Western interventions in Korea and Vietnam which fueled fears of a return to the "100 years of humiliation" that the Chinese suffered prior to their revolution. However, China's main focus was in the development of the PLA, as the USSR was seen as the

⁸ MacDonald, Donahue and Danyluk, 31.

most significant threat. The Sino-Soviet rift grew out of an ideological divergence between the two communist parties following Stalin's death in 1953. This tension lasted for nearly 30 years and included a series minor of military engagements over border disputes in the 1960s.⁹

In the early 1980s relations between China and Russia began to improve and as such, the need to focus military development on PLA capabilities diminished. Concurrently, increasing overseas trade from socialist reforms under Deng Xiaoping began to stress the capabilities of the PLAN to protect national interests. With these shifts in China's strategic landscape, the PLAN's strategy changed to one of near-seas defense. The near-seas defense strategy espouses the concept of the "first island chain" as a description of where China's naval defensive front would be drawn and is roughly approximated by the nine dotted line in the South China Sea. This new strategy posed the basis for the previously discussed move into the Spratly Islands in 1988.

The early to mid-1990s contained several events which caused Chinese leadership to accelerate development of near-seas defense capabilities. First, China became a net importer of oil in the early 1990s fueling an increasing sense of vulnerability to the country. Second, the United States and its allies' performance in routing Iraqi forces in Kuwait demonstrated what an uncontested buildup of Western forces could accomplish. And finally, the United States demonstrated a clear willingness to interfere in the reunification of China during the 1996 Taiwan Strait crisis.

The crisis was sparked in May 1995 when Taiwan president Lee Teng-hui was awarded a U.S. visa. While in the United States, Lee met with many government

⁹ Liselotte Odgaard, *China and Coexistence: Beijing's National Security Strategy for the Twenty-First Century*, Baltimore: Johns Hopkins University press, 2012, 101-102.

officials but it was his speech at Cornell University in which he touted the deeds of the Republic of China on Taiwan that was the tipping point for the PLA. China's Taiwan Affairs Leading Small Group was convened for an emergency session. At this meeting the two most senior PLA generals along with the PLA Deputy Chief of the General Staff (usually the only military member present at the meeting) urged the committee for a harsher policy towards Taiwan. Soon thereafter, the PRC began conducting military exercises and missile firings in the Strait of Taiwan and as close as 50 miles from Taiwan itself. These actions were meant as a means of coercive diplomacy to make clear to Taiwan the effects of pursuing a path of independence. In March of 1996 the PRC announced the conduct of another set of exercises and missile firings as Taiwan elections were to be held that year. The United States responded to this set more aggressively by deploying two carrier battle groups to the area, with the USS Independence deliberately chosen to sail through the strait as a demonstration of its commitment to Taiwan. This display effectively negated the PRC's coercive action and enabled the continued growth in popularity of Taiwan's Democratic Progressive Party which later won the presidency in 2000.¹⁰

Embarrassed by its inability to achieve the desired outcome on Taiwan or to deter the United States from intervening, the PRC began a concerted effort to modernize naval forces. In the four years following the Taiwan Strait crisis, China began construction on one nuclear attack submarine, three diesel attack submarines, and seven frigates.

Additionally, the PLAN purchased a diesel attack submarine and two destroyers from Russia. This was the beginning of a series of steps for China to build a force that could

¹⁰ Andrew Scobell, "Show of Force: Chinese Soldiers, Statesmen, and the 1995-1996 Taiwan Strait Crisis," *Political Science Quarterly* 115, no. 2 (Summer 2000): 231-232. Citation includes details of the Taiwan Affairs emergency session.

push the United States fleet out of its coastal waters to the boundaries of the nine dotted line by raising the costs of any United States intervention beyond its perceived interests. China also began design work on many of its current advanced systems such as the J-20 stealth fighter, the Jin ballistic missile submarine, and the DF-21C anti-ship ballistic missile variant (“the carrier-killer”). This family of systems would develop into the Anti-Access, Area Denial capabilities which the United States’ national security and military strategy documents are focusing on today.

On its island holdings, China began developing fortifications, port facilities, and runways where possible. In some cases such as Mischief Reef within the Spratly Islands, the entirety of the structure is built on pylons which are fixed to a reef which is rarely if ever above the water line. In total the islands extend China’s ability to have air and maritime domain awareness outside of territorial waters, reduce response time of maritime vessels by creating the infrastructure to sustain them from out of home port, and may provide future staging points for advance anti-air and anti-ship missile capabilities.

The Role of Chinese Nationalism in South China Sea Disputes

The value of land is a key aspect of Chinese culture.¹¹ From their roots as an agrarian society and through the communist party’s focus on the peasant, the value of land has been a key tenet to Chinese nationalism. Territorial integrity and national unification are two of four publicly stated “core interests” (along with state sovereignty and national security). While these two interests have consistently been discussed in reference to areas such as Taiwan, Tibet, and Xinjiang, they have reportedly been expanded to include the South China Sea islands during a private meeting with the

¹¹ Wang Peiran, “Mongolia’s Delicate Balancing Act,” *China Security* 5, no. 2 (Spring 2009): 75.

Deputy Secretary of State in March 2010.¹² While many Chinese citizens may know little about or benefit little from the disputed islands, the idea of the loss of sovereignty as described in state controlled media touches the core of the Chinese nationalist identity.

Therefore it is no surprise that expressions of anger from all levels of society can be observed when a claimant nation makes some provocative act towards these disputed territories. While these expressions have escalated the conflict in some cases, they also serve a legal purpose. International maritime law states that ownership of a territory is demonstrated by effective occupation or continuous administrative control and if that occupation and control goes unopposed, it should become binding.¹³ Therefore while protests from the public and bold statements from mid-level leaders may cause difficulties for Chinese diplomacy, they are a key component of any nation's ability to legally defend a territorial claim. It is this aspect of maritime law that makes nationalism a tool to be wielded in pursuit of a favorable solution, but not necessarily an indicator of what strategic policy is. This puts the leadership of all claimant nations in the precarious position of allowing enough outward dissent to fulfill legal obligations but limiting the nationalist fervor enough that it does not disrupt other aspects of the society or economy and does not create unachievable expectations with the public.

United States National Interests in the South China Sea

The 2010 *National Security Strategy* lists four enduring national interests. They are the security of the United States, its allies and partners; a strong and growing

¹² Alice D Ba, "Staking Claims and Making Waves in the South China Sea: How Troubled Are the Waters?," *Contemporary Southeast Asia* 33, no. 3 (2011): 284.

¹³ Peter A. Dutton, "Three Disputes and Three Objectives," *Naval War College Review* 64, no. 4 (Autumn 2011): 48.

economy; a global respect for universal values; and a favorable international order.¹⁴ As long as the disputes within the South China Sea continue, the risk of open hostilities and their effects on transoceanic shipping cannot be ignored. The United States relies on the global economy to provide cheap goods to the American consumer and to export high value products to the rest of the world. For example, in 2011 exports and imports of United States merchandise to the East Asia and Pacific region totaled 913 billion dollars.¹⁵ Trade between East Asia and Europe is also significant and any slowdown in the Euro zone as a result of a shipping disruption would have second order effects on American businesses. In short, the global economy relies on unfettered access through the South China Sea and the relative stability of its inhabitants. As the de-facto guarantor of access through the global commons, the United States would be under significant pressure to get involved should access through this area be disrupted. Additionally, public and congressional interpretations of treaty obligations with the Philippines may also force the United States military to get involved. Should the United States and Chinese become engaged, the risk of a Chinese attack on the homeland would be significant. Even if such a fight were to be brief and contained, the long-term shift in relations between countries in the region and the United States may have significant negative consequences in global economic growth.

If a conflict can be avoided and a resolution agreed to between claimant nations, United States' national interests may still be affected, although in a less acute manner. For example, shipping through the South China Sea would be disrupted if the right of

¹⁴ U.S. President, *National Security Strategy* (Washington, DC: Government Printing Office, May 2010), 7.

¹⁵ U.S. International Trade Commission, "U.S. Trade by Geographic Region," U.S. International Trade Commission, <http://dataweb.usitc.gov/scripts/Regions.asp> (accessed 25 December, 2012).

innocent passage is withheld.¹⁶ While all claimant nations have stated that they will allow innocent passage, there would be a legal justification against innocent passage if a significant portion of the South China Sea were classified as internal waters.

Classification as internal waters would be the logical result of China gaining sovereignty vice jurisdiction over the entirety of the nine dotted line area or by the Philippines claiming the Spratly Islands as part of the Philippine Archipelago. Both outcomes have low likelihoods of occurrence as evidenced by the previously discussed actions recently taken by their respective governments.

From a military perspective, the Chairman of the Joint Chiefs of Staff charges the military with developing and maintaining the capability to project power in all domains in support of the military objective to deter and defeat aggression.¹⁷ Once the dispute is resolved, countries can be expected to further develop some portion of the islands and reefs for defense purposes. While this would incrementally increase the challenges to forces operating offensively in this region, the geography of the South China Sea is still much more favorable than other risk areas which the armed forces are expected to operate. As a comparison, the narrowest passage within the South China Sea of which American forces might be asked to conduct operations is approximately 300km (160 nm) wide, while the Strait of Hormuz which is almost exclusively protected by the United States is only 33km (18 nm) wide. Furthermore, the land mass available for the emplacement of armaments is far less abundant than other choke points of concern and a

¹⁶ Innocent Passage is the ability of ships to transit through the territorial waters of another country (normally due to that path being the shortest route) when such transit is done in a peaceful manner. See the Article 18 & 19 of the UNCLOS for more information.

¹⁷ Chairman of the Joint Chiefs of Staff, *National Military Strategy* (Washington DC: Government Printing Office, February 2011), 8.

buildup of any significant capability on these features would be logistically challenging for the host nation.

Therefore, any probable dispute resolution will have a limited impact on the United States long-term national and regional interests. The most important factor is to ensure that the agreed upon solution is acceptable to all parties and can be enduring. If it is not, tensions will again rise and the risk of conflict with the United States and disruption of the global economy will reach precarious levels. As any agreement which occurs now will be codified in international law, changing that agreement in the future will only be harder and therefore make it more likely that the dissatisfied country will resort to forceful means. For China, these historic inflection points are not new, and as such it has developed and codified a philosophy known as the Five Principles of Peaceful Coexistence on how to prosper in spite of these challenges.

CHAPTER 5: CHINESE PEACEFUL COEXISTENCE

In September 2011, the Information Office of the State Council of China released a white paper titled “China’s Peaceful Development.” The white paper codified leadership’s evaluation of China’s relationship and contribution to the world now and for the future. Peaceful Development is based on the Five Principles of Peaceful Coexistence which has its roots in a similar concept developed by Russia following World War I. Premier Zhou Enlai first proclaimed China’s desire for peaceful coexistence in 1953 as a means to cool tensions with the United States following the Korean War and also with India as they established a framework for dialog and trade in Tibet. For the next thirty years, peaceful coexistence as a policy in China ebbed and flowed but in 1982 the communist party was convinced that China performed best when this policy was in favor. As a result, peaceful coexistence was written into the Chinese constitution. The Five Principles of Peaceful Coexistence are:

1. Mutual respect for each other's territorial integrity and sovereignty
2. Mutual non-aggression
3. Mutual non-interference in each other's internal affairs
4. Equality and mutual benefit
5. Peaceful coexistence

Mutual respect for each other’s territory and mutual non-aggression has been a concern since “[W]estern powers forced open China’s door with gunboats.”¹ Peaceful Development notes that conflict stifles the ability of China to grow, and that lack of

¹ China, Information Office of the State Council, September 2011, *China’s Peaceful Development*. http://english.gov.cn/official/2005-08/17/content_24165.htm (accessed August 1, 2012): 2.

growth makes China weak and susceptible to aggression from others. Therefore maintaining economic growth is in direct support of national security. Even today China is concerned how a slowing economy weakens the position of the state. With hundreds of millions of Chinese still in poverty and a population growth rate of around six percent, even strong growth rates by developed country standards will mean reductions in quality of living and a growing number of disenfranchised citizens. As these populations become less tolerant of their living conditions, it raises the likelihood for demands of political reform. While it is possible Chinese leadership would grant the populace some concessions, it may also choose to strengthen its position by creating external scapegoats at which to direct populace anger. This will decrease stability within the western Pacific and may accelerate the economic slowdown as nations close overseas industry or put restrictions on trade, such as occurred during the fall of 2012 over the Senkaku Island dispute with Japan.² Therefore, a stable external security situation is paramount to allow the government to manage the modernization of the economy, its policies, and the equitable distribution of wealth.

Mutual non-interference is both an expectation for relations with China and what China desires for an international order. While China sees the United States exercising hegemony to force nations to adhere to the post World War II, Western created world order; China by contrast uses its influence to shape what is acceptable to the world order.³ Three examples demonstrate how China has used the non-interference principle in international relations. First, China would only support United Nations Security

² CNBC, "Toyota China Sales Tank as Islands Row Hits Japan Inc.," CNBC, <http://www.cnbc.com/id/49296442> (accessed October 14, 2012).

³ Liselotte Odgaard, *China and Coexistence: Beijing's National Security Strategy for the Twenty-First Century*, Baltimore: Johns Hopkins University Press, 2012, 40.

Council (UNSC) Resolution 1816 and 1851, which directs counter piracy operations within Somali territorial waters, with Somalia's written consent.⁴ This requirement was levied despite international trade and Middle Eastern oil being a critical dependency of China. Second is its policy response to Iran's enrichment of nuclear fuel. In 2003, Tehran announced it had resumed a uranium enrichment program for use in civilian power plants, an activity allowed by the Nuclear Non-Proliferation Treaty (NPT). The United States was skeptical of Iran's peaceful intentions, and immediately began lobbying for sanctions, but China argued for patience, diplomacy, and time to allow the International Atomic Energy Agency (IAEA) to perform its inspections. Over the course of six UNSC resolutions on Iran's nuclear program, as many as nine other countries would join China in its calls for caution, patience, and acknowledgement that the only wrongdoing of Iran is its lack of compliance with IAEA requirements vice a violation of the NPT. On several resolutions China and those sharing its views successfully limited the scope of the sanctions or had specific exit criteria written in to expedite lifting sanctions upon compliance. In parallel, China offered to mediate talks between Iran and Western nations, stressing the importance of allowing Iran to have a civil energy program while ensuring international law was satisfied.⁵ A final example is China's response to civil unrest in Sudan (2003) and Syria (2012). In both instances, the international consensus was to intervene to curb the loss of life and to hold national leaders accountable for the claimed atrocities committed. China however claimed that both countries remain sovereign, and no action should be taken without government consent.

⁴ Peter A Dutton, "Charting the Course: Sino-American Naval Cooperation to Enhance Governance and Security," in *China, The United States and 21st-Century Sea Power* (Annapolis: Naval Institute Press, 2010), 217-220.

⁵ Odgaard, 131-138.

In the case of Sudan, China was able to negotiate a weaker UNSC resolution which utilized an African Union led peacekeeping force, approved by Sudan, to maintain the peace. When the International Criminal Court summoned Sudan's president for trial, China lobbied the UN to defer it indefinitely as he was the legitimate president of a sovereign nation executing effective control over the country. In Syria's case, China and Russia have vetoed UNSC resolutions similarly citing Syria's right of sovereignty to deal with an internal crisis without international interference. These last two cases are especially pertinent for China, who fears setting a precedent that may then be used to justify intervention in Chinese humanitarian issues.

Equality and mutual benefit speak to the Chinese desire to resolve issues in a "win-win" manner vice the zero sum result indicative of the Cold War containment strategy. Although the occasional zero sum rhetoric regarding the South China Sea disputes cause many western analysts to doubt Chinese intentions, there is a precedent for China resolving disputes to the mutual benefit of the parties. Two such examples are the border disputes with Russia and ex-Soviet nations. During the Cold War, tensions between China and Russia grew as the two communist parties diverged in ideology. Some of this tension resulted in conflict along the 2,640 mile border that they share. Much like the South China Sea disputes, Sino-Russian disputed territory issues developed during the hundred years of humiliation and were subject of three treaties in which China was forced to cede over 1.5 million km² of land to Russia. Following normalization of Russian relations in 1987, both countries began negotiations to demarcate the border. For the next 18 years the two countries adjudicated the rights to the land and in 2005, the final of three agreements was signed resolving the border dispute. In the final agreement,

China and Russia agreed to distribute the land evenly between the two nations. Even more accommodative was China's resolution of western border disputes with ex-Soviet states. China received only 22% of its claim with Kazakhstan, 32% of its claim with Kyrgyzstan, and only 4% of its claim with Tajikistan. The basis for these three agreements was the status quo of administered territory.⁶

In these border disputes China chooses to settle for a minority stake in order to satisfy higher priority national strategic goals. China is concerned about trying to oppose Western expectations alone and therefore sees Russia as a strategic ally. However for Russia, China is secondary to the West for determining national policy. As a result, China is especially keen at accommodating Russian desires. For example, China was abnormally quiet when Russia intervened in South Ossetia and Abkhazia, Georgia despite Russia's actions violating China's belief in non-interventionism. For the ex-Soviet nations, China's accommodation was a precursor to talks over energy trade and also an effort to keep the secular autocratic governments strong over their growing Islamic separatist populations. This is similar to an issue which China is currently dealing with in the Xinjiang region with regards to its large ethnic Turkish population. The fact that China is willing to trade nationalist interests against longer term political-strategic interests shows that China is driven by traditional realist tendencies and as such, can be predictably negotiated with to resolve future conflicts.

The final principle is peaceful coexistence itself and is summarized as allowing all nations to pursue their own interests without judgment based on their social system or ideology. A key feature of this is the abandoning of alliances with a commitment to work

⁶ Odgaard, 101-111.

towards global cooperation and co-management, and an expansion of the common interests of all mankind. The mention of being anti-alliance is of particular interest. China believes the United States is developing a containment strategy against them. It sees our treaties with South Korea, Japan, the Philippines, Thailand and our special relationship with Taiwan as described in the Taiwan Relations Act as an effort to encircle them with western influence. The NATO led campaign in Afghanistan further completes the picture of a surrounding United States influence. China asserts that alliances are a method of enforcing a zero sum cold war strategy, which all nations should abandon for a 21st century cooperative “win-win” strategy. While this may be the best path to success, it should be noted that countries are not interested in forming alliances with China. While China may provide a lot economically, its lack of a coherent domestic strategy (other than to maximize economic growth) leads other countries to doubt what they have to gain from a China alliance or a China lead world order.⁷ Additionally, China’s military has yet to develop the naval doctrine or capacity to provide a viable alternative to United States mutual defense treaties through the Pacific Rim (they do have some small bilateral military agreements with Central Asia through the Shanghai Cooperation Organization). Therefore there is some doubt about whether China’s objections to alliances are really to enable a more harmonious world or if they simply desire to level the playing field.

In summary, the Five Principles of Peaceful Coexistence describe both China’s foreign policy and its desired view of a world order. It allows China, and everyone else, to develop economically and pursue national interests in a manner that is not detrimental

⁷ Odgaard, 193.

to others, which should mitigate concerns of China becoming a threat. It informs China's alternative point of view that other countries may choose to align with on specific issues. Doing so gives that country influence with the United States as they try to court them back towards a Western point of view while simultaneously raising China's stature on the world stage.

CHAPTER 6: US INVOLVEMENT IN ISLAND DISPUTES

While the United States engagement over the South China Sea disputes has only developed recently, it has been involved in Chinese territorial disputes since the forming of the People's Republic through its support of Taiwan. Although the differences between the Taiwan dispute and the South China Sea disputes are significant, from the Chinese perspective they share the same fundamental issue of national unification. As such, any weakness or lack of clarity in the Chinese government's stance on the South China Sea islands may be perceived as a weak policy towards Taiwan. Additionally, any involvement from external nations in the South China Sea islands resolution may validate or set precedence or for involvement in resolution of Taiwan.

It is helpful to discuss briefly the United States long standing position on Taiwan to establish the context for actions taken over the South China Sea dispute. Following the Chinese forces entering the Korean War, the United States signed a Mutual Defense Treaty with the Republic of China (Taiwan) as a means to curb Sino-Soviet aggression in the region. The treaty lasted until President Carter recognized the PRC in 1979 and disestablished official ties with Taiwan. Although this was done to gain a strategic partner against the Soviets, many in Congress were upset with the President's move and soon thereafter the Taiwan Relations Act (TRA) was passed.¹ The TRA does not require the defense of Taiwan against PRC aggression; however it does state that any non-peaceful resolution of the dispute would be a "grave concern to the United States." The TRA also states that it is United States policy to provide defensive arms sales to Taiwan

¹ Congressional Research Service, *Taiwan's Political Status: Historical Background and Its Implication for U.S. Policy*, by Kerry Dumbaugh, CRS Report RS22388 (Washington, DC: Office of Congressional Information and Publishing, November 3, 2009). 3-4.

and to maintain the capacity of the United States to resist force or coercion against Taiwan.²

As a balance to the TRA, the United States has publicly supported a “one-China” policy since relations began to normalize in the 1970s. Three diplomatic communiqués provide the origins of the United States policy in which it is acknowledged that there is only one China and that Taiwan is part of that China. The last communiqué also stated the United States would not pursue a policy of Taiwan independence. However, in the same communiqué the United States pledges to reduce arms sales to Taiwan gradually over time, when in fact sales have continued.³ This strategic ambiguity has been maintained by presidential administrations through today. While it provides the United States flexibility in dealing with the China-Taiwan issue, it also fosters the perception of the United States as an interventionist in internal Chinese affairs and brings about skepticism over our assurances of neutrality regarding other territorial disputes.

Within the South China Sea, the United States policy is only beginning to take shape. At the July 2010 ASEAN Regional Forum, Secretary of State Clinton stated that “the United States has a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea.”⁴ Secretary Clinton also offered to facilitate multilateral talks on the disputes and that claims in the region should be derived from current national land boundaries. Although these statements may seem benign, they greatly upset and surprised the Chinese delegation. Two months earlier, Chinese officials meeting at the Department of State asked the

² *Taiwan Relations Act of 1979*, Public Law 96-8, 96th Cong., (January 1, 1979).

³ Congressional Research Service, 5-7.

⁴ Choe Sang-hun, “Offering to Aid Talks, U.S. Challenges China on Disputed Islands,” *New York Times*, 23 July 2010.

United States not to bring up the South China Sea disputes during the forum.⁵

Additionally, Secretary Clinton's statement rebuts Chinese position on the dispute in two key ways. First, China has always maintained its desired method to resolve the dispute was through bilateral negotiations. Secondly, China's claim on the Spratly Islands, Scarborough Shoal, and any jurisdictional claims on the greater South China Sea have been based on "historic rights" vice a strict interpretation of the UNCLOS.

The United States' decision to challenge the slow progress being made in the South China Sea seems to have been successfully lobbied by Vietnam who held the chairman's position of ASEAN at this time. Despite a promising speech by Hu Jintao's foreign policy coordinator at the ASEAN secretariat in January, Vietnam had grown impatient with China's enforcement of fishing regulations within the Paracel Islands.⁶ Through 2009, 33 Vietnamese fishing boats and 433 crew members were detained or confiscated by Chinese fishing enforcement authorities. This trend continued leading up to the July forum.⁷ Adding to the tensions were Chinese protests over exercises between the United States and South Korea and the refusal to accept Secretary of Defense Gates' request for a senior level meeting in June. In retrospect, the successful efforts of Vietnam to get the United States involved foreshadowed the announcement of a Pacific pivot.

The immediate reaction to the United States entry into the South China Sea dispute was clear when the head of the Chinese delegation walked out of the meeting for an hour. When he returned, he gave a thirty minute rebuttal during which he stated,

⁵ John Pomfret, "Beijing Claims 'indisputable sovereignty' Over South China Sea," *Washington Post*, 31 July 2010.

⁶ Leszek Buszynski, "The South China Sea: Oil, Maritime Claims, and U.S.-China Strategic Rivalry." *The Washington Quarterly* 35, no. 2 (2012): 150.

⁷ Carlyle A. Thayer, "The Tyranny of Geography: Vietnamese Strategies to Constrain China in the South China Sea." *Contemporary Southeast Asia* 33, no. 3 (2011): 357.

“China is a big country and other countries are small countries, and that’s just a fact.”⁸

While it is believed this veiled threat was directed at the delegation from Singapore, the realist undertones of the message were applicable to all the claimant nations attending.

Chinese reactions outside of the forum were less subtle. Two articles within the unofficial Chinese naval journal *Modern Ships* are of interest. The first was by Admiral Hu Yalin who had recently retired from the PLAN in which he held the position of chief political commissar. Hu wrote, “[T]he United States as the fundamental anti-Chinese force... may seek to precipitate a crisis, hoping that internal difficulties could facilitate foreign aggression, or that foreign aggression could cause internal anxiety.”⁹ This statement illustrates how Chinese military and political leadership may begin to equate challenges to the South China Sea disputes or the method of resolution as challenges against the regime. It also follows that Chinese nationalism would be the natural counter-measure to external challengers or the follow on “internal anxiety.” The second article of interest is from Navy Senior Captain Li Jie, a well-regarded analyst at the Naval Research Centre, the PLAN’s premier think tank in Beijing. Li criticizes Secretary Clinton’s speech as brazen for characterizing a Chinese core interest as a United States national interest requiring intervention. Both Hu and Li call for military preparations to defend their maritime rights even against the United States. While rhetoric like this is common in Chinese media, Captain Li is generally viewed as a moderate, which may be an indication of a dramatic shift in general PLAN opinion following the 2010 ASEAN

⁸ John Pomfret, “U.S. Takes a Tougher Tone with China”, *The Washington Post*, 30 July 2010.

⁹ Goldstein, “Chinese Naval Strategy in the South China Sea: An Abundance of Noise and Smoke, but Little Fire,” *Contemporary Southeast Asia* 33, no. 3 (2011): 333.

Regional Forum.¹⁰

Outside of China, the establishment of United States policy in support of a multilateral peaceful resolution has had a positive effect. In September 2010, Indonesian Foreign Minister Marty Natalegawa conducted an interview with *Bloomberg* in which he dismissed China's desire to resolve the South China Sea disputes without involvement from non-claimants and emphasized that ASEAN is critical to establish the conditions necessary to reach a resolution. Natalegawa also stated that the relationship with the United States is growing stronger as evidenced by the termination of the ban on ties with Indonesian special forces.¹¹ During the following month, Vietnam announced the opening of the Cam Ranh Bay port and repair facilities to all navies of the world. By opening the port, Vietnam hoped to attract foreign navy ships, and particularly those from the United States, to help balance China's supremacy in the region. As an indication of its level of commitment, the Vietnamese dredged the port to make it capable of supporting United States aircraft carriers.

In April 2011, the Philippines submitted a Note Verbale challenging the validity of the Chinese nine dotted map used to rebut the joint Malaysia-Vietnam continental shelf submission.¹² Since the Commission on the continental shelf had already ruled on the joint submission, the Philippines Note can only have been intended as a means to put pressure on the Chinese to progress towards a resolution. However, China's rebuttal

¹⁰ Goldstein, 334.

¹¹ Bloomberg, "Indonesia's Natalegawa on Diplomacy," Bloomberg, <http://www.bloomberg.com/video/63081396-indonesia-s-natalegawa-interview-on-diplomacy.html> (accessed November 1, 2012).

¹² Philippines, Permanent Mission of the Republic of the Philippines to the United Nations, 2011, No 000228. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012)

Note Verbale was anything but conciliatory calling the Philippines' claim "totally unacceptable" and invalid citing the relative recent nature of the claim.¹³ Following this submission, the Philippines Foreign Secretary Albert del Rosario visited Washington. There he hoped to gain assurances from the Department of State that the 1951 Mutual Defense Treaty would protect the Philippines in the event of armed conflict in the Spratly Islands. But the Department of State has refused to state publicly where the United States stands with respect to defending the Philippines claimed or settled Spratly Islands. One possible reason for the ambiguity is that some State officials may feel the Mutual Defense Treaty does not apply to the Spratly Islands as the Philippines did not claim them when the treaty was signed. However, the treaty triggers a response even when attacks are made on forces in the "Pacific area" but not necessarily within United States or Philippines territory.¹⁴ Yet, if the United States made its lack of support publicly known, it may embolden aspects of the Chinese military or government. Although del Rosario did not get his public assurance, the United States did ease some of his concerns by coming to some agreements on military equipment sales and intelligence sharing.¹⁵

In May and June of 2011, several Chinese fishing vessels physically interfered with Vietnamese oil and gas survey work within the South China Sea. In one incident, the fishermen maneuvered themselves behind the survey ship and cut the cables hanging from the ship used to operate the seafloor survey equipment. This event is similar to actions by Chinese fishermen against the USNS *Impeccable* in 2009 and may indicate

¹³ China, Permanent Mission of the People's Republic of China to the United Nations, 2011, CML/8/2011. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (accessed August 1, 2012).

¹⁴ "Mutual Defense Treaty Between the United States of America and the Republic of the Philippines," August 30, 1951, *United Nations Treaty Series*, no. 2315 (1953): 136.

¹⁵ Buszynski, 149.

that this was a practiced or encouraged tactic by local fishing authorities vice an ad hoc occurrence. As a result, China was subject to public and private scrutiny both in media, government, and diplomatic channels. In an effort to calm tensions in the region, China agreed to drop its objection to the implementing guidance for the 2002 Declaration of Conduct and Vietnam agreed to keep ASEAN only preparation meetings a customary practice vice a requirement. With this obstacle gone, ASEAN and China were able to sign an implementation agreement in July which opened the process for crafting a binding Code of Conduct.

The signing of the implementing instructions seemed to renew progress in the South China Sea and, if left undisturbed, may have resulted in significant headway. For example, between June and October 2011, Chinese and Vietnamese leaders had several meetings to discuss dispute resolution, strengthening political trust, military cooperation, and joint naval patrols in the Gulf of Tonkin. As a byproduct of this cooperation, anti-Chinese rallies in Hanoi, once prevalent, had all but disappeared.¹⁶ Yet the United States would again disrupt the environment with actions starting in November 2011. It was then that Secretary Clinton wrote an article for *Foreign Policy* that would be the announcement of the United States' plan to pivot to Asia. While the article does not explicitly characterize China as a threat to the United States, to a Chinese strategist it is clear how the United States intends to impose itself on China. It talks of fostering bilateral alliances with China's territorial competitors; supporting western regional organizations like those developed following World War II (NATO, World Bank, IMF); and defending the United States definition of freedom of navigation in the south China

¹⁶ Buszynski, 151.

Sea which includes the ability to conduct military surveillance.¹⁷ In short, to the Chinese strategist it proclaims the exporting of the Western world order to the Pacific in an effort to maintain United States hegemony.

Almost coincidentally, the Department of Defense announced the agreement with Australia to station approximately 2,500 Marines in Darwin. This action was criticized by Indonesia, a neutral state in the South China Sea dispute, for its provocative nature.¹⁸ Other military movements announced include the stationing of long-range surveillance drones in the eastern Indian Ocean and the routine deployment of up to four Littoral Combat Ships (LCS) to Singapore. Along with these announcements, the Department of Defense promulgated a strategic guidance paper in January 2012 describing the rebalance to the Asia-Pacific region. Within the document, only China and Iran are mentioned as state actors requiring specific military capabilities to defeat. These capabilities and procedures fall under the military's AirSea Battle concept. While Department of Defense officials routinely stress that AirSea Battle is not China specific, its similar nomenclature to AirLand Battle, the concept used to describe the defeat of the Soviets in Europe, breeds skepticism.

Although the United States can cite its activism as contributing to the improved relations with regional players (not including China), it has not progressed the region towards a lasting peace. Where work towards a binding Code of Conduct seemed promising prior to November 2011, any hope of an agreement one year later is distant at best. In a meeting with senior communist party and PLAN leaders, President Hu Jintao

¹⁷ Hillary Clinton, "America's Pacific Century," *Foreign Policy* 189, (2011): 56-63.

¹⁸ Christopher Freise, 28 August 2012, No. 247 "By Invitation Mostly: the International Politics of the US Security Presence, China, and the South China Sea," RSIS Working Paper, S. Rajaratnam School of International Studies, Singapore: 2.

called for a more rapid military modernization to deal with the potential military conflicts in the region.¹⁹ The recent entry into operation of the Chinese aircraft carrier *Liaoning* and the introduction of its second stealth fighter are but some of the modernizations desired to counter United States and regional capabilities.

Then in April 2012, a dispute over the illegal fishing activities of some Chinese vessels in the Scarborough Shoal sparked a six month standoff between China and the Philippines. Disagreement between how to address the dispute prevented ASEAN from issuing a joint statement at the conclusion of its July 2012 meeting for the first time in 45 years. While the United States continued to express concern for the events occurring in the South China Sea, no public comments were made on how the specific issue at the shoal should be resolved and the United State military generally kept its distance. Perhaps for these reasons, the Philippines Foreign Secretary felt compelled to seek a more active UN involvement in his address to the General Assembly in October. He states,

The United Nations was created to protect the weak from the strong, to provide for the equality of all sovereign states... Today, my country faces its most serious challenge to the security of its maritime domain and integrity of its national territory... We therefore rely on our friends and allies and all those who believe in the peaceful and fair management of the seas and oceans to uphold the rule of law and UNCLOS. We will endeavor to elicit a more proactive action from the General Assembly.²⁰

The Philippines plea to the General Assembly illustrates how the situation in the South China Sea has gotten out of control. The haphazard manner in which the United

¹⁹ Ibid., 2. As discussed in the referenced work, there is some uncertainty to the appropriate translation of Hu Jintao's words. One analyst believes Hu is anticipating a war, while another writes Hu is speaking to a military's generic warfare capability. In the author's opinion, there is no supporting evidence to indicate Hu believes war is inevitable and therefore the more dovish tone is used.

²⁰ Albert F. del Rosario, "Adherence to the Rule of Law: Right is Might" (speech at the General Debate of the 67th Session of the United Nations General Assembly, New York, NY, 01 October 2012).

States has wielded its national power within the South China Sea has done nothing more than disrupt the resolution process. In order to get the process to a peaceful conclusion, diplomatic, legislative and military actions must be linked to achieve unity of effort.

CHAPTER 7: RECOMMENDATIONS

Gain Credibility: Ratify the UNCLOS

As of November 2012, 164 of the 193 member states of the United Nations have ratified the UNCLOS.¹ The United States is the only nation on the United Nations Security Council, the only member of the North Atlantic Treaty Organization, the only arctic nation, and the only member of ASEAN other than Cambodia, to have not ratified the UNCLOS. Although the United States asserts that it operates in accordance with the UNCLOS, our lack of formal support weakens our position when trying to influence the behavior of other nations in the maritime environment. As a non-party member to the treaty, the United States' efforts to enforce freedom of navigation diplomatically are severely hampered. Without access to the legal resolution processes codified in the treaty, military forces are compelled to dispute excessive claims physically which increases the risk of conflict. For these reasons, the Indonesian ambassador to the United States called ratification of the UNCLOS "a strategic necessity."² Another reason for ratification is to protect the current language within it. If enough countries lobbied to change or clarify the treaty, it is uncertain if non-signatories would be able to participate. Finally, although not applicable to the United States in the South China Sea, ratification of the UNCLOS would allow exploitation of a significant amount of additional continental shelf beyond the 200 nm EEZ.

¹ Eighteen of the twenty nine member states who have not ratified the UNCLOS are landlocked.

² Ambassador Dino Patti Djalal, "The Bali Debrief: An Insider's Perspective of the November Summits" (lecture, Center for Strategic and International Studies, Washington DC, December 1, 2011) <http://csis.org/multimedia/video-bali-debrief-insiders-perspective-november-summits> (accessed 1 November, 2012).

Between May and June 2012, the Senate Foreign Relations Committee held four hearings on the ratification of the UNCLOS. Witnesses testifying in favor of ratification included Secretary of Defense Panetta; Secretary of State Clinton; Chairman Dempsey; Vice Chairman Winnefeld; Chief of Naval Operations Greenert; Commandant Papp; Commander, USTRANSCOM; Commander, USPACOM; and Commander, USNORTHCOM. From the business community, the CEO of Verizon, CEO of the National Association of Manufacturers, CEO of the American Petroleum Institute, and CEO of the United States Chamber of Commerce also testified in favor of the treaty. The extensive support for ratification of the UNCLOS is not a recent development; it has been consistent since the Senate first discussed ratification in 2004. During that Congress, the committee passed a resolution 19-0 in favor of ratification; however, Senate Majority Leader Frist would not bring the ratification to a vote. In 2007, the committee again held hearings on the UNCLOS and again recommended in favor of ratification with a 17-4 vote. However like 2004, the current majority leader, Senator Reid, would not bring it to a vote. Following the most recent hearings in committee, no vote was held on ratification as it was believed doing so would be too politically charged in the middle of an election year.³

The nearly two decade delay in ratification of the UNCLOS illustrates the effectiveness of the minority opposition. At the most recent set of hearings, the opposing position was well articulated by a few members on the committee. Their disagreement with the UNCLOS centers on three main issues: taxation of revenue from deep sea

³ Senate Foreign Relations Committee, *Hearings on Law of the Sea*, 112th Cong., 2d sess., 2012, 4-5.

resources, subjecting the United States to undesirable environmental regulations, and the ineffectiveness of the treaty in dispute resolution.

As previously discussed, the UNCLOS allows party nations to extend their area of economic jurisdiction along the continental shelf beyond the 200 nm EEZ. However, it requires a royalty be paid based on a percentage of resources extracted following the fifth year of exploitation. The funds are put under the custody of the International Seabed Authority which then distributes them to all treaty members. Opponents have three issues with this process. First it establishes precedence for the international ownership of the global commons. This concept may then be applied to airspace, cyberspace, and space itself. However norms for operating in airspace and space are generally developed and none of the other global common domains have inherent economic resources. Additionally, the United States supported the claim that the deep sea bed did belong to all mankind by voting in favor of UN General Assembly Resolution 2749 in 1970 and has reaffirmed this in current US Code (Title 30 Chapter 26). The second objection on this issue is that the revenue could be dispersed to countries hostile to the United States. However the UNCLOS establishes a 36 member body, of which the United States would be a permanent member, to determine by consensus how the funds are distributed. Therefore the United States has the ability to block the execution of any offending distribution plan. Finally, several opponents to the treaty believe that industry can mine the deep seabed without the protection of the UNCLOS. While US Code does provide domestic legal protection for industry to exploit the deep seabed, industry feels doing so outside of the UNCLOS framework would open its projects up to excessive risk.⁴

⁴ Senate Foreign Relations Committee, *Hearings on Law of the Sea from the Business and Industry Perspective*, 112th Cong., 2d sess., 2012, 5-7.

The second major thread of opposition against UNCLOS is in regard to a perceived environmental burden on the United States. Several articles throughout the treaty discuss requirements of the party state to regulate pollution; the most often cited one by opponents being Article 222. It reads, “States... shall adopt laws and regulations... to implement applicable international rules and standards established through competent international organizations... to prevent, reduce and control pollution of the marine environment.”⁵ Opponents to the UNCLOS interpret this as requiring the United States to adopt any internationally agreed to set of standards, even if the United States is not a signatory to that agreement. Specifically, opponents see this as a means of circumventing the Senates opposition to ratifying the Kyoto Protocol, a global framework for stabilizing greenhouse gas emissions. If they were correct, then any Kyoto Protocol member nation could take the United States to international court and have financial penalties levied. However, those in favor of the UNCLOS cite that states are only required to enforce *applicable* international rules and standards and that any treaty or standard that the United States has not separately approved is not *applicable*.

The final area of opposition to the UNCLOS is in regards to its effectiveness at settling disputes for which the South China Sea is used as an example almost exclusively. They argue if China, the Philippines, Malaysia, Vietnam, and Brunei have all ratified the UNCLOS, and nothing has been resolved, then how does ratifying the treaty help the United States, and how can it be worth the perceived negative effects previously described. However this argument suffers from a significant logic flaw perpetuated by

⁵ “United Nations Convention of the Law of the Sea,” November 16, 1994, *United Nations Treaty Series* 1833, no. 31363, 490.

proponents of the treaty overstating the direct effect ratification would have on national security.

The purpose of the UNCLOS is not to determine *ownership* of any rock, reef, or island. The UNCLOS only describes the *rights of the owner* of that rock, reef or island in the surrounding maritime environment. As such, the UNCLOS provides no mechanism or framework to resolve disputes of ownership, nor was it ever intended to do so.

The disputes which UNCLOS was purposed to resolve were those of excessive claims off of owned territory. For those types of disputes, the UNCLOS has performed well in defining a framework to reach an agreement between the two parties, or to bring about binding arbitration if negotiations amongst parties are not successful. In the South China Sea, there are jurisdictional and rites claims independent of the disputed islands which the United States does not concur with, however being outside of the UNCLOS we cannot make use of its mechanisms. However these independent jurisdictional claims are generally not destabilizing to the region, and can therefore be deferred until the issues of ownership are resolved.

With the reasons for obstructing the treaty shown false, it is up to the Department of Defense and Department of State to begin an active and coordinated effort to lobby for the ratification of the UNCLOS. This effort should start with the President of the United States. While the current administration supports the treaty, it has not designated its ratification as a priority effort. With Democrats in control of the Senate, any prioritization of the treaty from the President would get it moved to the top of the committee agenda. This must be done in the first year of the 113th Congress or it risks falling victim again to 2014 election year drama. Furthermore, the President must use his

influence on the Senate Majority Leader to bring the treaty to a vote. If it is to fail ratification due to lack of support then that will at least give the United States diplomats the impetus to begin negotiations for a treaty revision and give State, Defense and business personnel the signal to craft long-term strategies for operations outside of international law.

Second, the Department of State and Defense need to prepare practical, factual supported assessments of the advantages and disadvantages for future testimony towards ratification. In the most recent hearings, military and government officials were often unprepared to respond to probing questions from Senators who oppose ratification (generally Republican). In these instances, the Chairmen of the committee (a Democrat) often jumped to their defense fostering the perception that this was a partisan issue, which may influence the votes of the greater Senate along party lines. In fact, during two of the hearings Republican dissenters openly questioned if testimony of military and government witnesses was given based on their own informed opinion or if it was done in support of their superiors (the President and Secretary of Defense).⁶

Finally, the Department of State must work with the Senate to craft acceptable language for our declaration of application of the UNCLOS. Three articles of the UNCLOS call for the signatory to declare amplifying information regarding how the UNCLOS will be carried out under the signatory's national legal system, what method of international adjudication it prefers, and the relations of the UNCLOS to military and police activities. While these declarations are not supposed to change the legal effect of the UNCLOS, they do serve as a means of going on the record in areas in which there are

⁶ Senate Foreign Relations Committee, *Hearing on Law of the Sea Convention, Perspectives from Former Government Officials*, 112th Cong., 2d sess., 2012, 34-35; Senate Foreign Relations Committee, *Hearing on Law of the Sea Convention, Perspectives from the Military*, 112th Cong., 2d sess., 2012, 13-14.

differing interpretations. For example, within the EEZ a minority group of nations believe military surveillance should be prohibited. They argue that the UNCLOS requires activities within the EEZ be peaceful and that military surveillance by foreign nations is not peaceful. Therefore one item that should be included in our declaration is that military surveillance activities are peaceful, and that such activities will not be prohibited from the EEZ of the United States, nor will prohibitions on United States surveillance activities be recognized. Such a statement was made by Germany in its ratification declaration and doing so influences international norms and expectations which may ultimately come into play in future UNCLOS revisions.

Maintain Stability: Posture U.S. Naval Forces to Deter Military Coercion

Defense budgets of nations in South East Asia have increased dramatically since 2000. Most of the increase in these budgets has been focused on improving naval and air capabilities to project power beyond traditional boundaries. Malaysia's arms imports demonstrate the significance of this change, having gone up over 700% between 2000 and 2011. However it has been the consistent efforts of China to modernize its air and sea forces over the last two decades that have created a capability imbalance within the region. Table 2 below illustrates the severity of the current disparity.

	Philippines	Brunei	Malaysia	Vietnam	China
Naval Personnel	22,000	747	19,500	43,000	255,000
Carriers	-	-	-	-	1
Destroyers	-	-	-	-	27
Frigates	1	-	2	6	51
Corvette	14	-	13	9	1
Fast Attack	8	16	14	17	254
Patrol	38	10	-	30	-
Subs (Attack/Ballistic)	-	-	2/-	2/-	52/4

Table 2 – 2012 Military Naval Capability of Claimant Nations

Absent a regional peer competitor, groups within China’s military and government structure will push for a coercive military policy towards resolution of the disputes, a type of 21st century gunboat diplomacy. Some within Chinese naval circles look at Russia’s successful operation in Georgia as evidence that an aggressive strategy is still viable in today’s international order.⁷ Even if combat operations are never authorized by top political leadership, armed exchanges between China and Vietnam in the mid-70s and late 80s demonstrate that bloodshed can still occur.

The current United States policy of encouragement for peaceful resolution through multilateral negotiations and expressions of concern regarding the threat against freedom of navigation, does not pose a credible deterrent to these groups. In 2005 Major General Zhu Chenghu, a senior officer in the PLA and professor at the Chinese National

⁷ Lyle Goldstein, “Chinese Naval Strategy in the South China Sea: An Abundance of Noise and Smoke, but Little Fire,” *Contemporary Southeast Asia* 33, no. 3 (2011): 330.

Defense University, spoke to a group of foreign journalists regarding a potential conflict with the United States. He acknowledged that war with the United States would result in the destruction of many Chinese cities in the east, but also stated that the United States is equally vulnerable. The subtle implication being that China with its vast size and population can afford to lose many cities while the United States may not be as resilient. Other Chinese officials have spoken of the Chinese military as a deterrent to the United States for “in the end you care more about Los Angeles than you do about Taipei.”⁸

While the United States has on occasion maneuvered overwhelming force into the region when Taiwan or Japan is threatened, in general the presence and actions of forces in the South China Sea is not consistent and therefore the message to claimant nations may be misinterpreted. For example, the absence of a United States naval presence around Scarborough Shoal during the summer 2012 Sino-Philippines standoff may encourage Chinese forces to be aggressive in other areas, while the United States carrier deployment to the South China Sea in October 2012 during the Sino-Japanese Senkaku Island dispute may encourage other claimant nations to challenge China under the belief that they are protected. Either interpretation is dangerous as it gives all nations incentive to become more aggressive, increasing the likelihood of conflict for which the United States long-term interests will ultimately be damaged.

Therefore, the United States needs to adjust its naval presence in the region to provide a consistent deterrent to military force or coercion by any claimant nation like United Nations peacekeeping forces have done on land for many years. This may cause some initial disappointment from friendly and allied claimant nations; however, it is

⁸ Alexandra Harney, “Top Chinese General Warns US Over Attack,” *Financial Times*, July 15, 2005.

critical to maintaining a position of neutrality and to minimize Chinese perception of a containment strategy which might encourage them to retaliate economically or via other diplomatic methods. These operations should be paired with a consistent strategic messaging campaign that reinforces the neutrality with respect to ownership, expresses the commitment to counter any military action, and guarantees the immediate cessation of such patrols with resolution of territorial ownership.

Practically these operations should require an average of about two combat vessels [destroyer, cruiser, or littoral combat ship (LCS)] patrolling the seas year round between the Paracel Islands, Spratly Islands, and Scarborough Shoal. This will require more frequent disaggregation of forces from traditional carrier and amphibious strike groups; however, such an action may bring positive second order effects through an increase in opportunities for mil to mil engagement and limiting any potential political embarrassment from having a United States capital ship within the area at all times. The four rotational LCS out of Singapore would be ideal to perform the majority of these operations due to their proximity to the disputed area and the fact that Singapore is not a claimant nation.

For the United States Navy, these patrols would be most like the Freedom of Navigation (FON) operations currently carried out around the world. In 2011 the Navy conducted FON maneuvers on nine different nations within the Pacific Command area of responsibility, some of which were done on these same claimant nations. Therefore while an initial negative reaction might be expected, eventually such operations fade from the public eye. Additionally, this negative reaction can be mitigated through private diplomacy prior to the public announcement of the strategy. As long as the operations

are conducted without bias, they should encourage claimants to come to the negotiating table with pragmatic solutions.

Allow China to Lead the Resolution Process under Peaceful Coexistence

Despite apparent successes over the last two years with the 2010 signing of the implementing guidance for the Declaration of Conduct, the increased access the United States has gained in the region, and the current discussions on a binding Code of Conduct, near term resolution of the disputes is still uncertain. While China's government and populous have been willing to use claimant's position on the disputes as justification for punitive actions, other claimant nations have been reluctant or limited in their ability to do so. Given China's inability to exploit deep water energy reserves through indigenous assets and the reasonable price of oil and gas imports, the opportunity costs for maintaining the status quo are minimal.

While the previously mentioned recommendations will increase the chances for resolution, alone they may not be compelling enough to change behavior. Given the fiscal situation of the United States, the long-term commitments to Iraq and Afghanistan, the developing security environment in Israel and Iran, and the continued turmoil through much of the Arab world, countries in the western Pacific question our ability to sustain the increased attention we claim to be giving them as a result of the "rebalance." If China believes the attention of the United States will wane, it may simply use this time to consolidate gains while stalling any sort of progress on the resolution through diplomatic means. In fact, one weakness of relying on ASEAN to champion a multilateral resolution process is that the annual rotating chair of the organization may have different viewpoints towards a resolution. As an example, the 2012 chair was held by Cambodia who

routinely attempted to advance the Chinese position amongst the group, and the 2014 chair is Burma (Myanmar) who the United States has no official relationship with and is being courted significantly by China with multiple economic development projects.

The most effective motivation for China to resolve the South China Sea disputes is to empower them to lead the process as the regional great power. This will put China front and center on the world stage for the first time as a leader of nations vice its current role as a spoiler to the Western agenda. If China is successful, it will gain a lasting peace in the South China Sea, a new source of economic growth through exploitation of seabed resources, and validation as a regional power which it can leverage into a global power through continued development. If China refuses or fails, they risk the loss of credibility in the global arena, its position as an alternative to the western system among developing nations, and the loss of control over the dispute resolution process to ASEAN and the United States.

As China takes responsibility for the process, ASEAN and the United States should serve as observers to hold China accountable to its constitutional ideology of peaceful coexistence and stated policy of peaceful development. A solution developed under peaceful coexistence and development would be respectful of all the claimants' interests and deepen mutual beneficial cooperation. For China that would certainly require a relinquishment of claims over sovereignty on many of the islands, and a sharing of jurisdictional rights for economic exploitation in the surrounding waters. As previously discussed, precedence for settling territorial disputes for something less than originally claimed has been established with Russia, India, and central Asia.

China is likely to first hold negotiations bilaterally as it views multilateral negotiations as a means for its competitors to gain greater bargaining power. This method should not be opposed by ASEAN or the United States. Instead ASEAN and the United States need only to convince each nation to withhold finalizing their individual agreements until all nations have reached an agreement and they are verified to not be in conflict. This will force China to consider all claimants interests whenever conducting bilateral negotiations. Over time China itself may conclude that the only way to reach an agreement is to conduct the negotiations simultaneously with all claimants.

For the other claimant nations, the United States should continue to encourage and show appreciation for their patience and pragmatism. The other claimant's primary interest in the South China Sea is not one of security as it is with China, but mostly economic. The United States can offer assistance in establishing business relationships with United States deep sea oil and gas exploration companies through the Office of Commercial and Business Affairs with favorable funding through the Overseas Private Investment Corporation. The fact that a handful of companies are willing to attempt exploration activities in the current risk environment is an indicator of what interest there would be should the territorial and jurisdictional disputes be resolved.

If China uses the Principles of Peaceful Coexistence to guide the resolution process, the resulting allocations should be very close to the how the islands are currently administered with the addition of several multilateral economic exploitation agreements. The resolution would address the sovereignty of the features throughout the South China Sea, delineation between unilateral, bilateral and multilateral jurisdictional areas, a structure for establishing and enforcing fishing rights and protections in shared

jurisdictional areas, and a revenue sharing framework for energy exploitation activities in shared jurisdictional areas.

In detail, the Spratly Islands should be recognized as having a common history amongst all nations present and therefore its benefits should be largely devoted to the region much like the philosophy agreed to in the UNCLOS regarding the deep sea beyond the EEZ. Islands within the Spratlys will have a sovereign territorial sea of 12 nm and the EEZs of these islands should be the subject of multilateral jurisdiction. This meets the Five Principles by promoting respect for territorial integrity and non-interference with internal affairs by creating areas of sovereign control, but also ensures mutual benefit of the region by allowing the economic and energy gain to be shared by all. For China, this will meet its unique national security interests as long as China feels they have enough sovereign features to establish a comprehensive maritime domain awareness picture and can provide a logistical support function for its underway vessels. While such capabilities do not yet exist in earnest, it is possible that they could be developed on currently owned features and therefore not require the surrendering of additional land by other claimants.

In the Paracel Islands, China has a strong basis for a claim and can be expected to resist changes in the status quo which has them administering all islands. However, without some accommodation of Vietnamese fishermen who frequent the area, China would not be exercising the principles of mutual benefit and peaceful coexistence or the common interests of humanity for which China purports to support. Specifically, China would need to go beyond a resource exploitation agreement as would be developed for the Spratly Islands, but also a means to allow Vietnamese fishermen access to one or

more features to gain shelter. At best this would mean the return of Prattle Island to Vietnam. But given the extent that which China has publicly established its ownership of the Paracels, this option seems unlikely. More promising, would be a diplomatic agreement to allow Vietnamese fishermen entry into specified sovereign territory without a visa or the normal diplomatic clearance process. The EEZ between China and Vietnam in this area should allow for Vietnamese or shared exploitation of the area between the Vietnamese mainland up to and including the Paracel Islands with shared or Chinese exploitation allowed to the east. This will give both nations ample area for their citizens to fish and for oil exploration and exploitation activities to be conducted.

Regarding the joint fishing administrations of both island chains, they should be representative organizations operating on the premise of consensus, similar to that of ASEAN. This will ensure the common interests of participating nations are always given primacy. They would be responsible for establishing applicable regulations and season windows. Enforcement of the regulations are likely to require personnel exchanges on shore facilities as well as patrol vessels as has been done between China and the United States for the Container Security Initiative and the enforcement of the 1997 United Nations resolution against drift net fishing.⁹ These personnel exchanges should have secondary benefits as they build confidence and trust amongst partner nations and may in the long term bring China more towards the responsible stakeholder position that the United States desires.

⁹ Andrew S. Erickson, "The Container Security Initiative and U.S.-China Relations," in *China, The United States and 21st-Century Sea Power* (Annapolis: Naval Institute Press, 2010), 64-69; Bernard Moreland, "U.S.-China Civil Maritime Operational Engagement," in *China, The United States and 21st-Century Sea Power* (Annapolis: Naval Institute Press, 2010), 160-161.

CHAPTER 8: CONCLUSION

China and the United States are on a collision course that neither country can afford. Without a regional competitor or demonstrable commitment from the United States, China will build its military forces such that it can deter intervention through exacting unacceptable costs on its opponent. If armed conflict occurs as a result of China's attempt to exert authority over disputed islands, the United States may be compelled to come to the claimant's defense against China. Armed conflict between the United States and China over the disputed islands risks significant escalation to what otherwise may have been a limited, containable incident.

The United States believes its involvement in the South China Sea crises over the past decade has been beneficial, citing increased access agreements within the region and a slightly more assertive ASEAN. However, these actions have not driven China to compromise, and instead China has accelerated its administrative efforts to establish the validity to its claim. Additionally, militant Chinese will have no problems portraying United States actions as an active containment strategy which will make even moderates within the party cautious.

The United States, and the region, fears the only solution acceptable to China is to make sovereign the entire South China Sea as represented by the nine dotted line. However, the evidence against that fear is substantial. China's resolution of disputes with Russia, India, and the central Asian nations all show China is willing to abandon much of its claim in the interest of longer term interests. China's laws and submissions to the United Nations for execution on the UNCLOS show China is flexible, at least in the Paracel Islands. Finally, China's Five Principles of Peaceful Coexistence obligates

them to consider the mutual interest of the region, as historically that is the only way to ensure economic growth and political survival.

It is not too late to change strategies. If the United States can ratify the UNCLOS, it will significantly change the dynamics within the region and the United States' ability to influence the discussion diplomatically. By deploying a military task force to deter coercive action of any nation, the United States will demonstrate its resolve and encourage all nations to bring pragmatic solutions to the table. Finally, if China is in charge of the process, it will be forced to live up to its own expectations and bring the dispute to resolution. A resolution, that in fact will benefit all nations and not significantly affect the United States interests in the region.

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VITA

LCDR Michael Hartmann most recently completed a tour at the Research Development Support Activity within the Office of Naval Intelligence where he worked on National Intelligence acquisitions for naval platforms. Previously LCDR Hartmann served as the Engineer Officer on USS HELENA (SSN 725). LCDR Hartmann was commissioned in 1999 from NROTC Georgia Institute of Technology. Following initial training LCDR Hartmann served onboard the USS BUFFALO (SSN 715) and as exercise planning officer on the Sixth Fleet staff in the Naples, Italy. Lieutenant Commander Hartmann is a graduate of the Georgia Institute of Technology, earning a B.S. in Aerospace Engineering. He also has masters in Engineering Management from Old Dominion University and Military Operational Art and Science from Air Command and Staff College.